IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1954 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARGOVANBHAI KESHAVLAL PRAJAPATI
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for Petitioner,MR MR PRAJAPATI for Petitioner.
DS AFF.NOT FILED (R) for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.
MR M.IQBAL A SHAIKH for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“PBM Act” for short), has

challenged his detention order on various grounds.

By an order dated 1-2-2006, the petitioner is detained under provisions of the aforesaid Act. With the detention order, the petitioner is also served with the ground of detention. In the grounds of detention, it is alleged that at the time of inspection on 6-1-2006, the officer of the Civil Supplies Department found various irregularities on the part of the petitioner. It is alleged that the petitioner is running motor garage, namely, Maruti Care and he has kept certain gas cylinders unauthorizedly and about 40 such cylinders were found from the premises of the petitioner. It is alleged that the petitioner is illegally doing refilling of gas and for that purpose, aforesaid gas cylinders were kept, even though the petitioner is not having any license for that. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order.

Mr.Prajapati, learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner at the hand of the Central Government as well as at the hand of the State Government. He submitted that the petitioner has made a representation through his brother on 8th February, 2006, which was received by the Central Government on 23rd February, 2006 and the same was rejected on 22nd March, 2006. He further submitted that there is a considerable delay on the part of the Central Government in deciding the representation of the petitioner. He further submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of his say, Mr.Prajapati has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.
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> 10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

Mr.Shaikh, learned Counsel appearing for Central Government submitted that delay in deciding representation of the petitioner is explained in paragraph 5 of the affidavit filed on behalf of the Central Government. In paragraph 5 of the affidavit filed by Mr.A.K.Ganguly, Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi, it is stated as under :

> "As regards contention made in sub-para (i) of para 4 of the petition, it is submitted that the representation dated 8.2.2006 made by the brother of the detenu was received in the Central Government on 23.2.2006 through State Government vide their

> letter dated 22.2.2006. After considering the representation, competent authority desired that the clarification on certain points be called for from the Ministry of Petroleum and Natural Gas and accordingly these were called for vide letter dated 2.3.2006. The Clarification from the Ministry of Petroleum and Natural gas were received on 10.3.2006. After considering the representation along with reports and grounds of detention and other relevant records of the case, the same was rejected by the Competent Authority in the Central Government on 22.3.2006 (11.3.2006, 12.3.2006, 15.3.2006, 18.3.2006 and 19.3.2006 were closed holidays). The decision of the Central Government was conveyed to Superintendent, District Jail, Junagadh on the same day i.e. 22.3.2006. by telegram with a direction to convey the same to the detenu. State Government was also informed simultaneously on the same day. Thus, the representation of the detenu was considered by the Central Government as expeditiously as possible."

It is required to be noted that even though the representation of the petitioner was received by the Central Government on 23rd February, 2006 through the State Government, the competent authority called for more explanation from the Ministry of Petroleum and Natural on 2nd March, 2006 and even after receiving clarification from the concerned Ministry on 10th March, 2006, representation of the petitioner was rejected on 22nd March, 2006. Even if the holidays, as pointed out in the reply are to be excluded then also there is a delay of seven days in deciding the representation of the petitioner, therefore, the explanation given for delay in deciding representation is not satisfactory. Considering this aspect of the matter, this petition is required to be allowed and the order of detention passed against the petitioner is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. Order of detention dated 1-2-2006 is quashed and set aside. Petitioner – Hargovanbhai Keshavlal Prajapati is ordered to be released

forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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